NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAYCOM BILLING SERVICES INC., a Delaware Corporation,	)))	No. 04-55409
Plaintiff-counter-defendant – Appellant,	)))	D.C. No. CV-01-06868-SJO
v.	)))	**MEMORANDUM**[*]
ANDREW PHILLIPS, an individual; JOHN BLAUGRUND, an individual; INTERNET NETWORK CONNECTIONS, a Bahamas Corporation; GLOBAL PAYMENT SYSTEMS LIMITED, a British Virgin Islands Corporation; INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York Corporation, dba IMB Net Trade,	)))))))))))	
Defendants-Appellees,	))	
PAYMENT RESOURCES INTERNATIONAL INC., a Nevada Corporation,	))))	
Defendant-counter-claim – Appellee,	)))	

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

and	)
	)
	)
AMTRADE INTERNATIONAL	)
BANK, a Georgia Corporation, dba	)
Amtrade International Merchant	)
Services; MINOTOLA	)
INTERNATIONAL BANK, a New	)
Jersey Corporation; BANCO UNO	)
S.A., a Costa Rica Corporation,	)
	)
Defendants.	)
_____	)

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding
James Otero, District Judge, Presiding

Argued and Submitted November 14, 2005
Pasadena, California

Before: FERNANDEZ and BERZON, Circuit Judges, and PANNER,[**]
District Judge.

Paycom Billing Services, Inc. appeals the decisions of the district court,

which dismissed as to IBM Denmark and granted summary judgment as to

International Business Machines Corporation (IBM Corp.). We affirm.

    (1)   The district court dismissed Paycom's action against IBM Denmark, a

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[**] The Honorable Owen M. Panner, Senior United States District Judge for the
District of Oregon, sitting by designation.

foreign corporation, for lack of personal jurisdiction.[1] California's long arm statute

extends jurisdiction to the limits of what is permitted by the United States

Constitution,[2] and here that required meeting the elements of the specific

jurisdiction due process tests. See Harris Rutsky, 328 F.3d at 1129; Core-Vent

Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1485 (9th Cir. 1993). We agree with the

district court that Paycom did not make out a prima facie case[3] for jurisdiction and

adopt the district court's decision to that effect in its March 6, 2002, Order

Granting Defendant IBM Denmark's Motion to Dismiss.

      (2)   The district court entered summary judgment in favor of IBM Corp.

on the basis that Paycom had not shown that IBM Corp. was liable for the actions

of IBM Denmark.[4] We affirm the district court decision.

    First, Paycom's failure to argue to the district court that IBM Corp. was

directly liable for its own actions has waived that issue on appeal. See Crawford v.

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[1] The dismissal order was issued by Judge Pregerson.

[2] See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003).

[3] Because the issue was decided on written submissions, that is all Paycom had to do. See AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588–89 (9th Cir. 1996); Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002).

[4] The summary judgment was granted by Judge Otero.

Lungren, 96 F.3d 380, 389 n.6 (9th Cir. 1996); <u>A-1 Ambulance Serv., Inc. v.</u>

<u>County of Monterey</u>, 90 F.3d 333, 338–39 (9th Cir. 1996). Second, what Paycom

did argue at the district court was that IBM Corp. was liable on the basis of agency

or alter ego, and that is what the district court actually decided. Paycom has

waived those issues by not raising and arguing them in its opening brief. <u>See</u>

<u>Humble v. Boeing Co.</u>, 305 F.3d 1004, 1012 (9th Cir. 2002); <u>Alcock v. SBA (In re</u>

<u>Alcock)</u>, 50 F.3d 1456, 1461 n.9 (9th Cir. 1995); <u>Eberle v. City of Anaheim</u>, 901

F.2d 814, 817–18 (9th Cir. 1990).

     AFFIRMED.